

EXHIBIT "C"

SAMPLE DRAFT

AIRPORT USE PERMIT

**FUEL AND LUBRICANTS  
(TRUE NORTH RAMP)**

PERMIT NUMBER:FP-500

EFFECTIVE DATE: August 1, 2006  
TERMINATION DATE: November 30, 2006

1. PERMITTEE:        **Joe Pilot True North Fuel**  
**1000 Gasoline Alley**  
**Carlsbad, CA 92011**  
Telephone: (619) 222-2222  
Facsimile: (619) 222-2223

Attn: Mr. Joe Pilot

This Fuel and Lubricants Permit (hereinafter called "Permit") entered into by **Joe Pilot True North Fuel** (hereinafter called "Permittee"), and the County of San Diego (hereinafter called "County"), grants said Permittee the exclusive permission to temporarily sell aviation fuels (gasoline and jet fuel) and lubricants for aircraft located at the True North Tie Down Ramp at McClellan-Palomar Airport (hereinafter called "Airport"), subject to the following covenants and conditions:

2. TERM. The term of this Permit shall be for a period of four (4) months, commencing August 1, 2006 and ending November 30, 2006. This permit may be renewed for an additional 30 days up to three times, not to exceed a total of seven months, upon written approval by the Airports Director.
3. PREMISES The Premise means that area located on the True North ramp at Palomar Airport designated by the Airport Manager for the location of the fuel truck.

4. AIRPORTS' LONG-TERM INTENDED USE OF THE PREMISES. It is Airports' intention that a permanent fuel facility shall be constructed on the True North ramp at McClellan-Palomar Airport. Use of the premises described herein shall be for an interim use during the planning and construction of the aforementioned permanent fuel facility, which is planned to open in December 2006 but which may open later than that. The County reserves the right to enter the Premises to perform testing or other work as may be necessary for planning purposes as pertains to future redevelopment of the site..

5. FEES. Permittee shall pay to County, in addition to fuel flowage fees as specified in the Schedule of Rates and Charges, Permittee shall pay a fee of \$\_\_\_\_\_ minimum monthly guarantee and \$\_\_\_ per gallon for fuel sales and \$\_\_\_ per gallon for lubricant sales, during the term of this Permit. The County reserves the right to modify the Schedule of Rates and Charges from time to time. These fees are to be paid on all fuel and lubricants supplied to or delivered at the Airport. Fuel and lubricating oil shall include all types of fuel and lubricating oil used for aviation purposes. No fuel or lubricating oil shall be delivered for non-aviation purposes without first obtaining the prior written approval of the Airports Director.

6. FUEL REPORT. During the term of this Permit, Permittee shall submit a Fuel Report (Exhibit "A") or, other pre-approved form, by the twentieth (20th) day of each month for the previous months activity. Said report shall list all fuel and lubricant sold by the Permittee during the month. Permittee shall submit to County, at the address specified in Section 7 of this permit, a Fuel Report whether or not Permittee has sold any fuel or lubricants during the previous month.

7. REPORTS AND PAYMENTS. All fees and reports shall be due and payable by the twentieth (20th) day of each month following the last day of the business month during which deliveries were made. All payments shall be made payable to and mailed to the County of San Diego, with a copy of completed Fuel Delivery Report (See Exhibit "A") or other pre-approved form to:

County of San Diego  
Department of Public Works  
5555 Overland Ave.  
Bldg 2, Rm 276, MS O-309  
San Diego, CA 92123

8. INSURANCE. Without limiting Permittee's indemnification obligations to County under this Permit, Permittee shall provide and maintain for the duration of this Permit insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Permittee's operation and use of the Premises. The cost of such insurance shall be borne by the Permittee.

*I. Minimum Scope of Insurance*

Coverage shall be at least as broad as:

A. Airport Liability or Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.

B. Automobile Liability covering all owned, non owned and hired auto, Insurance Services



Office form CA0001.

C. Workers Compensation, as required by State of California and Employer's Liability Insurance.

## *II. Minimum Limits of Insurance*

Permittee shall maintain limits no less than:

A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.

B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.

C. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of County of San Diego.

## *III. Deductibles and Self-Insured Retention*

Any liability deductible or self-insured retention must be declared to and approved by the County's Risk Manager.

## *IV. Other Insurance Provisions*

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

### *A. Additional Insured Endorsement*

Any general liability policy provided by Permittee shall contain an additional insured endorsement applying coverage to the County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively.

### *B. Primary Insurance Endorsement*

For any claims related to this Permit, the Permittee's insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, the members of the Board of Supervisors of the County, its officers, officials, employees, or volunteers shall be excess of the Permittee's insurance and shall not contribute with it.

### *C. Notice of Cancellation*

Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County at 1960 Joe Crosson Drive, El Cajon, CA 92020.

## V. Qualifying Insurers.

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County's Risk Manager.

## VI. Evidence of Insurance

Prior to commencement of this Permit, but in no event later than its effective date, Permittee shall furnish the County with certificates of insurance and amendatory endorsements effecting coverage required by this Section. Permittee shall furnish certified copies of the actual insurance policies specified herein, within thirty days after commencement of this Permit. Thereafter, copies of renewal certificates and amendatory endorsements shall be furnished to County within thirty days of the expiration of the term of any required policy. Permittee shall permit County at all reasonable times to inspect any policies of insurance of Permittee that Permittee has not delivered to County.

## VII. Failure to Obtain or Maintain Insurance; County's Remedies

Permittee's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Permit, and County may, at its option, terminate the Permit for any such default by Permittee.

## VIII. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Permittee, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Permittee pursuant to the Permit, including, but not limited to, the provisions concerning indemnification.

## IX. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Permittee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

## X. Self-Insurance

Permittee may, with the prior written consent of County's Risk Manager, fulfill some or all of the insurance requirements contained in this Permit under a plan of self-insurance. Permittee shall only be permitted to utilize such self-insurance if in the opinion of County's Risk Manager, Permittee's (i) net worth, and (ii) reserves for payment of claims of liability against Permittee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Permit. Permittee's utilization of self-insurance shall not in any way limit liabilities assumed by Permittee under this



Permit.

#### XI. Waiver of Subrogation

Permittee and County waive all rights to recover against each other or against any other tenant or occupant, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant, from any Claims (as defined in the Article entitled "INDEMNIFICATION") against either of them and from any damages to the fixtures, personal property, Permittee's improvements, and alterations of either County or Permittee in or on the Premises and the Property, to the extent that the proceeds received from any insurance carried by either County or Permittee, other than proceeds from any program of self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Permittee shall be a standard waiver of rights of subrogation against County by the insurance company issuing said policy or policies.

9. INDEMNIFICATION. County shall not be liable for, and Permittee shall defend and indemnify County and its officers, agents, employees and volunteers (collectively "County Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the operations covered by this Permit or with occupancy and use of Airport by Permittee arising either directly or indirectly from any act, error, omission or negligence of Permittee or its officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of County Parties. Permittee shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

10. COMPLIANCE WITH LAW. Permittee, at its sole cost and expense, shall comply with observe, and secure compliance with and observation of, all the requirements of the County of San Diego Airport Rules and Regulations, Federal Aviation Administration Rules and Regulations, San Diego County Code, and all Municipal, County, State, and Federal laws, ordinances, codes, statutes, and regulations now in force or which may hereafter be in force pertaining to the operations conducted by Permittee regarding the sale of fuel and lubricating oils.

11. HAZARDOUS SUBSTANCES. If any hazardous substance spills, leaks or is discharged from any facility on the premises or from the Permittee's fuel trucks, Permittee shall immediately take all necessary actions to prevent further spills, leaks or discharges and shall immediately clean up and promptly dispose of the spilled hazardous substance and any soil contaminated by the spill. If Permittee fails to clean up the spill or to properly dispose of any contaminated soil, County may, after written notice to Permittee, take all steps County deems necessary to make the necessary repairs, to clean up the spill and to dispose of any contaminated soil. Permittee shall, within thirty (30) days of receiving a bill from County, reimburse County for the cost of all such repairs and clean up work that County does or has had done.



Permittee shall be solely responsible for fully complying with all present or future rules, regulations, restrictions, ordinances, statutes, laws and orders of any governmental entity regarding the storage, distribution, processing, handling or disposal of hazardous substances including, but not limited to, gasoline, diesel, aviation fuels, lubricating oils, solvents, chemicals, and hazardous substances designated in Labor Code Section 6382 and Health & Safety Code Section 25316.

Permittee shall be solely responsible for paying all fines, damages and penalties imposed by any governmental agency regarding the production, storage, distribution, processing, handling, disposing, spilling, leaking or discharging of any hazardous substance as defined above.

12. STORMWATER AND NON-STORMWATER DISCHARGES: The Airport is subject to federal, state and local laws regarding the discharge of pollutants into the stormwater conveyance system in stormwater and non-stormwater. The programs established by these laws regulate existing activities, the construction process, and impose design requirements on new development and redevelopment. The development related parts of the local stormwater program implement a region-wide model plan, the Standard Urban Stormwater Management Plan or "SUSMP." In addition to the SUSMP, County has developed a Stormwater Pollution Prevention Plan (SWPPP) for the Airport and the Airport's Industrial and/or Commercial leases that provides for the elimination of prohibited non-stormwater discharges and the prevention of stormwater pollution through the development, installation, implementation and maintenance of pollution prevention measures, source control measures, and Best Management Practices (BMPs). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground.

Permittee is required and agrees to use, operate, maintain, develop, redevelop and retrofit the Premises in accordance with all applicable federal, state and local laws restricting the discharge of non-stormwater at or from the Airport; and all such laws, regulations, or local guidance requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Permittee further agrees to develop, install, implement and/or maintain at Permittee's sole cost and expense, any BMPs or similar pollution control devices required by Federal, State and/or local law and any implementing regulations or guidance. Permittee further agrees to conform to the specifications in the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance, Ordinance Nos. 9424 and 9426, (whether or not that County ordinance is legally applicable to Permittee at this Airport) and to the specifications in the SWPPP for the Airport as the same may be amended from time to time by the County Board of Supervisors or the Director of DPW, respectively.

Permittee understands and acknowledges that the stormwater and non-stormwater requirements applicable to the Airport and to Permittee may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Permittee's activities or development or redevelopment by Permittee or County. County may amend the SWPPP for the Airport in response to such changes, or to implement any County program for stormwater and non-stormwater management at the Airport. Permittee agrees



to develop, install, implement, and maintain such additional BMPs and/or other pollution control practices at the Premises at Permittee's sole cost and expense. To the extent there is a conflict between any Federal, State or Local law, County ordinances, any applicable SUSMP, or the SWPPP for the Airport, Permittee shall be obligated to comply with the more restrictive provision. Permittee shall provide County with unrestricted access to the Premises and/or all pertinent records upon seven (7) days written notice for the purpose of monitoring the implementation and maintenance of required BMPs and/or other pollution control devices at the Premises. Failure to provide County with access or to implement, develop, install, and maintain any pollution control practices or BMPs required by this Section shall be grounds for immediate termination of this Permit.

13. SUBSTANCE ABUSE. Permittee and its employees and agents shall not use or knowingly allow the use of the Airports for the purpose of unlawfully driving a motor vehicle or aircraft under the influence of an alcoholic beverage or any drug or for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any controlled substance, precursor, or analog specified in Division 10 of the California Health and Safety Code, and violation of this prohibition shall be grounds for immediate termination of this Permit.

14. TAXES, ASSESSMENTS AND FEES. The terms of this Permit may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this Permit, the private party may be subjected to payment of property taxes levied on such interest. Permittee shall be responsible for the payment of, and shall pay before they become delinquent, all taxes, assessments, and fees assessed or levied upon Permittee or the area covered by this Permit or any interest therein, including, but not limited to buildings, structures, fixtures, equipment or other property installed or constructed thereon. Permittee further agrees not to allow such taxes, assessments, or fees to become delinquent and as such to become a lien against the area covered by this Permit or any improvements thereto. Nothing herein contained shall be deemed to prevent or prohibit the Permittee from contesting the validity or amount of any such tax, assessment, or fee in the manner authorized by law.

15. ADMINISTRATION. This Permit shall be administered on behalf of County by the:

County of San Diego  
Department of Public Works (DPW)  
Airports Director  
1960 Joe Crosson Drive  
El Cajon, CA 92020  
Telephone: (619) 956-4800

17. NOTICES. Any notice or notices required or permitted to be given by this Permit may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the addressee. Notices served by mail shall be addressed to Permittee at the address stated in Section 1 and to County at the address stated in Section 16



(ADMINISTRATION) contained herein, or as County or Permittee may hereinafter designate by written notice to the other.

18. RECORDS, ACCOUNTS AND AUDITS. Permittee shall, at all times during the term of this Permit, keep or cause to be kept, true and complete books, records and accounts of all financial transactions and operations of all business activities, of whatever nature, conducted pursuant to the rights granted herein. Said records must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

County shall have the right at any reasonable time to examine and perform audits of Permittee's records pertaining to its operations on the Premises. The cost of said audits shall be borne by County; however, Permittee shall provide to County at Permittee's expense, necessary data to enable County to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Permit and to Permittee's use of the Premises.

19. SPECIAL CONDITIONS – modifications may be needed for True North Ramp Permit

A. Subcontractors. Subcontractors and/or agents shall comply with all of the terms, conditions, and covenants of Permit herein and Permittee will provide a copy of this permit to each of the Permittee's subcontractors and/or agents.

B. Egress/Ingress. In order to deliver fuel to customers at any County Airport, the Permittee, its agents or subcontractors must enter the airport through the leasehold that owns the storage tanks the delivery is to made or via the nearest approved gate. The Airports Director shall designate which entry gate shall be used and the route the delivery vehicle shall take from the entry gate to the storage facility.

C. Limited Number of Trips. For safety reasons, the Airport Director shall limit number of times Fuel Trucks are allowed to cross from north to south side of the Airport per day.

D. Delivery to Storage Facilities. Permittee and its subcontractors shall only deliver aviation fuels to approved storage facilities.

E. Delivery to Intermediate Truck Transfers: Permittee and its subcontractors' deliveries to intermediate truck transfers or any other container are prohibited without written approval from the local Fire Marshall and the Airports Director.

F. Defaults by Permittee and/or its Subcontractors. Failure for the Permittee or its subcontractors, suppliers, or agents to follow the covenants and conditions of this contract shall constitute a default by Permittee and a breach of this Permit. Should Permittee fail to cure any such defaults within the timeframe specified in the Notice of Default that the County will send to Permittee, the County has the right to terminate this Permit. The Notice of Default will be sent to the Permittee as specified in Section 17.



G. Delivery Times. All deliveries shall be made during regular airport business hours. All deliveries made after normal business hours must be pre approved by the airport manager.

H. Pricing. Pricing shall be in accordance with methodology included in the response to the Request for Proposals.

19. ACCEPTANCE. Permittee accepts this Permit subject to all the terms and conditions hereinabove

IN WITNESS WHEREOF, the parties hereto have caused this Permit to be executed by their duly authorized agents.

PERMITTEE: **Joe Pilot True North Fuel**

By: \_\_\_\_\_ Dated: \_\_\_\_\_

Print Name and Title \_\_\_\_\_

COUNTY OF SAN DIEGO:

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
PETER DRINKWATER, Director  
San Diego County Airports

cc: Airport Manager (S119, N137, N188, N243); Assessor (O225); Department of Public Works,  
Attn: Accounts Receivable (O309)

06/19/06

**EXHIBIT "A"**  
**COUNTY OF SAN DIEGO**  
**FUEL DELIVERY REPORT**

AIRPORT \_\_\_\_\_ PERMITTEE \_\_\_\_\_ MONTH OF \_\_\_\_\_, 20\_\_\_\_

FBO	DATE	GALLONS DELIVERED	TOTAL/GAL	FEES	FEES REMITTED
	DELIVERED	80 OCT   100 OCT   JET   OTHER		PER GAL	

TOTAL DUE FOR FUEL

FBO	DATE	LUBRICANTS	TOTAL/GAL	FEES	FEES REMITTED
	DELIVERED			PER GAL	

TOTAL DUE FOR LUBRICANTS

SUBMITTED BY \_\_\_\_\_ DATE \_\_\_\_\_